

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 LARRY JOSEPH THOMAS,

No. 2:04-cv-00733-MCE-DAD P

12 Petitioner,

13 vs.

ORDER

14 A. K. SCRIBNER, Warden, et al.,

15 Respondents.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this
18 court's February 20, 2008 denial of his application for a writ of habeas corpus. Before petitioner
19 can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R.
20 App. P. 22(b).

21 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has
22 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The
23 certificate of appealability must “indicate which specific issue or issues satisfy” the requirement.
24 28 U.S.C. § 2253(c)(3).

25 ///

26 ///

1 A certificate of appealability should be granted for any issue that petitioner can
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
3 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

5 Petitioner has made a substantial showing of the denial of a constitutional right in the
6 following issues presented in the instant petition: (1) whether the trial court violated his rights
7 under the Sixth and Fourteenth Amendments when it removed him from the courtroom during
8 his trial; (2) whether he received ineffective assistance of counsel; and (3) whether the prosecutor
9 committed misconduct.

10 Petitioner has also filed a request to proceed on appeal in forma pauperis. Petitioner was
11 permitted to proceed in forma pauperis in his habeas petition in this court. Fed. R. App. P.
12 24(a)(3) provides that a party who was permitted to proceed in forma pauperis in the district
13 court action may also proceed on appeal in forma pauperis, subject to certain exceptions not
14 applicable here. Accordingly, petitioner’s request to proceed on appeal in forma pauperis will be
15 denied as unnecessary.

16 Petitioner has filed numerous requests to “reopen” this case and has also filed several
17 recent habeas petitions in this action. Petitioner is advised that he is now proceeding with an
18 appeal in the United States Court of Appeals for the Ninth Circuit and that his case in this court
19 is now closed. Any further requests or motions should be filed in the Ninth Circuit Court of
20 Appeals and not in this court. Any further documents filed in this action will be disregarded.

21 ///

22 ///

23 ///


24
25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. A certificate of appealability is issued in the present action; and

3 2. Petitioner's March 5, 2007 request to proceed on appeal in forma pauperis is denied as
4 unnecessary.

5 Dated: March 13, 2008

6 
7 MORRISON C. ENGLAND, JR.
8 UNITED STATES DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26